

No. 12

In the United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of
FRED E. KEELER,
a Debtor.

CLARENCE OCHS, GUY A. KELLEY and P. L.
NEWCOMB,
Appellants,

vs.

O. T. GILBANK and HUGO O. ROMBERG, as Com-
mitteemen of the Estate of Fred E. Keeler, a Debtor,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

SEP 15 1937

PAUL P. O'BRIEN,
CLERK

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Appeal, Petition for.....	59
Assignment of Errors.....	61
Order in re Petition for Review Filed by Clarence Ochs, Guy A. Kelley and P. L. Newcomb.....	61
Bill of Exceptions.....	44
Bond	67
Certificate of Clerk.....	71
Certificate of Review.....	6
Exhibit A—Petition for Order to Show Cause in re Huntington Beach Well Directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb.....	10
Exhibit A—Argeement.....	12
Exhibit B—Order to Show Cause Directed to Clar- ence Ochs, Guy A. Kelley and P. L. Newcomb re Huntington Beach Well.....	18
Exhibit C—Order Directing Clarence Ochs, Guy A. Kelley and P. L. Newcomb to Account re Hunt- ington Beach Well.....	20
Citation	2
Clerk's Certificate.....	71
Docket Entries.....	4

	PAGE
Engrossed Bill of Exceptions.....	44
Order Extending Time.....	57
Petitioners' Exhibit No. 1—Letter dated March 1, 1935	48
Petitioners' Exhibit No. 2—Letter dated March 4, 1935	48
Respondents' Exhibit A—Copy of Contract.....	49
Stipulation Extending Time to File Bill of Excep- tions	57
Testimony on Behalf of Petitioners:	
Gage, Arthur—	
Direct examination	45, 48
Cross-examination	47
Holoday, Mr.—	
Direct examination.....	50
Newcomb, P. L.—	
Direct examination.....	52
Cross-examination	56
Names and Addresses of Solicitors.....	1
Order Allowing Appeal.....	65
Order Fixing Amount of Cost Bond.....	65
Order in re Petition for Review Filed by Clarence Ochs, Guy A. Kelley and P. L. Newcomb.....	41
Order of July 19, 1937, Denying Petition for Review	40
Petition for Appeal.....	59
Petition to Review Referee's Order.....	23
Praecipe	69
Referee's Order, Petition to Review.....	23
Referee's Supplemental Certificate on Review.....	39
Stipulation to Settle and Allow Bill of Exceptions.....	43
Supplemental Certificate on Review.....	39

Names and Addresses of Solicitors.

For Appellants:

JOHN W. CARRIGAN, Esq.,

510 West Sixth Street,

Los Angeles, California.

For Appellees:

BEN S. HUNTER, Esq.,

458 South Spring Street,

Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

In the Matter of)	
	(	In Bankruptcy—
FRED E. KEELER,	)	No. 23,666-C
	(	CITATION
a Debtor.)	

To O. T. GILBANK and Hugo W. ROMBERG, as
Committeemen of the Estate of FRED E. KEELER,
a Debtor, respondents, and to BEN S. HUNTER,
Esq., their attorney, GREETING:

You are hereby cited and admonished to be and appear
at a United States Circuit Court of Appeals for the Ninth
Circuit, to be held at the City of San Francisco, in the
State of California, on the 15th day of September, A. D.
1937, pursuant to Order Allowing Appeal filed August
17th 1937 in the Clerk's Office of the District Court of
the United States, in and for the Southern District of
California, in that certain case entitled IN THE
MATTER OF FRED E. KEELER, a DEBTOR, involv-
ing a controversy regarding the interpretation of a con-
tract, and the Order on the Petition for Review duly made
and entered in this case in Bankruptcy Docket No.
23,666-C, wherein Clarence Ochs, Guy A. Kelley and

P. L. Newcomb are petitioners and appellants, and O. T. Gilbank and Hugo O. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, are respondents and appellees, and you are directed to show cause, if any there is, why the Order in so far as it is rendered against the petitioners and appellants as in the said petition for appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Leon R. Yankwich United States District Judge for the Southern District of California, this 17th day of August, 1937, and of the Independence of the United States, the one hundred and *sixty-first*.

Leon R. Yankwich

U. S. District Judge for the Southern District of California.

For Judge Cosgrave who is out of the District.

[Endorsed]: Service of the above Citation, and receipt of a copy thereof, together with a copy of the Petition for Appeal, Assignment of Errors and Order Allowing Appeal herein is hereby admitted this 17 day of August, 1937. Ben S. Hunter By Ben S. Hunter Jr, Attorney for Respondents and Appellees. Filed R. S. Zimmerman Clerk 37 min past 4 o'clock Aug 17 1937 P. M. by M. J. Sommer Deputy Clerk.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

BANKRUPTCY DOCKET

Title of Case
CAUSE NO. 23666-C

In the matter of
Fred E. Keeler

Sec. 74 Bkcy.

Referee and Trustee		Attorneys
Referee:	H. L. Dickson	Ben S. Hunter
Trustee:	H. W. Romberg	
Recr.:	O. T. Gilbank	
Committeeman:	“ “	

Date

* * * * *

1937

June 10 Fld. Refs. cert. on review.

“ 15 Fld. Refs. suppl. cert. on review.

“ 18 Fld. not. of hrg. mot. of Clarence Ochs et al to
rev. ret. 6/28/27.

“ 28 Ent. proc. on & ord. submitting petn. of Ochs,
et al to review previous findings & ord. on
briefs to be fld. this date & 5 x 5 thereafter.
Fld. pts. & auths. in supp. petn. for review.

* * * * *

July 19 Ent. ord. denying petn. for rev. of Ochs et al &
confirm. decision of Ref. Excepts. to petnrs.

“ 28 Fld. ord. denying petn. for rev. & confirm.
decision of Ref. with costs against petnrs.

“ 29 Fld. stip. & ord. extend. to 8/20/37 time to
serve & file prop. B/E/.

* * * * *

Aug. 17 Fld. petn. of Clarence Ochs, Guy A. Kelley &
P. L. Newcomb on appeal. Filed citation on
appeal sgd. by Judge Yankwich, ret. 9/15/37.
Fld. assign. of error. Fld. prae. Fld. ord. allow.
appeal & fxg. cost bond \$250. Fld. stip. re flg.
B/E. Fld. propos. B/E. Fld. stip. for costs
on appeal.

[TITLE OF COURT AND CAUSE.]

CERTIFICATE OF REVIEW

This is the Referee's certificate on petition for review made by Clarence Ochs, Guy A. Kelley and P. L. Newcomb. This certificate is made by Hugh L. Dickson, the Referee in Bankruptcy before whom this matter was and is pending.

Said Referee hereby certifies that in the course of proceedings, this being a proceeding under Section 74 of the Bankruptcy Act, O. T. Gilbank and Hugo W. Romberg, the trustees of said estate, who are designated as the Committeemen in the Extension Proposal, as such Committeemen filed a petition for an order to show cause directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb, upon which an order to show cause was issued by the undersigned Referee in Bankruptcy, commanding the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb to appear and show cause why they should not be required to account to O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a debtor, for the proceeds of 15% of the oil or gas produced and sold by them from a well upon certain lands belonging to the estate and hereinafter more particularly described in the agreement which is the subject matter of this controversy.

That the hearing on said order to show cause came on duly and regularly to be heard upon the 30th day of March, 1937. That the Committeemen were present in person and were represented by their counsel, Ben S. Hunter; the debtor was represented by his counsel, Guy Richards Crump, and Clarence Ochs, Guy A. Kelley and P. L. Newcomb were present in person and were repre-

sented by their counsel, John W. Carrigan. The order was heard upon oral and documentary evidence and after arguments by counsel submitted to the undersigned Referee for his decision, whereupon the said Referee made the order to account, which is the order herein complained of.

The controversy *arised* out of the following facts:

Clarence Ochs, Guy A. Kelley and P. L. Newcomb are the successors in interest of Arthur G. Gage, O. T. Gilbank and Hugo W. Romberg, as the Committeemen of the Estate of Fred E. Keeler, on or about the 6th day of November, 1935, entered into an agreement with Arthur G. Gage, a copy of said agreement being attached to the order to show cause which is Exhibit "A" of this certificate.

Thereafter Arthur G. Gage and then his successors in interest, the petitioners herein, went upon said premises and placed the well described in the foregoing agreement upon production and have been accounting to the Committeemen for 40% of the total production and have retained for their own use and benefit 60% of the total production. By reason thereof and in order to prevent a forfeiture of the property the Committeemen have been obliged to account to the Pacific Electric and the Associated Oil Company for the 25% of the production which belongs to them, which leaves for the estate 15% of the production.

It was the contention of the Committee that the contract covered only the interest of the estate in the property and that therefore the petitioners were only entitled to retain 60% of 75% of the total production of oil and gas. There was some evidence introduced on behalf of the petitioners which tended to show that in the prelimin-

ary negotiations a different construction had been given the agreement than the one now contended for by the Committeemen. Evidence was also introduced on behalf of the petitioners which showed that the Committeemen had accepted as royalty a lesser sum than the amount which they now contend was due them. Your referee decided that the contract was clear and unambiguous and could not be altered by oral testimony.

The findings of the referee were and are that Clarence Ochs, Guy A. Kelley and P. L. Newcomb are the successors in interest of Arthur G. Gage, who upon the 6th day of November, 1935, entered into a contract with O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, for the operation and maintenance of the oil and gas well hereinbefore described, and as such successors in interest of said Arthur G. Gage are in actual possession of said land and premises and are receiving and have received the total proceeds of the oil and gas produced, saved and sold therefrom; that by the terms of said contract the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb are entitled to retain and receive as compensation for the things to be done by them under said contract 60% of 75% of the total net proceeds, namely, 45% of the total net proceeds of said oil and gas, and are obliged to account for the balance of such net proceeds; and that the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb have accounted to O. T. Gilbank and Hugo W. Romberg, as such Committeemen, the petitioners herein, for only 45% of said proceeds and have retained and kept the balance of the proceeds for their own use and benefit. The referee then made the order complained of and so required Clarence Ochs, Guy A. Kelley and P. L. Newcomb to account for and pay

over to O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a debtor, the 15% of the proceeds derived from the sale of oil and gas produced by said well and not heretofore accounted for by them.

Attached hereto and made a part hereof are the following exhibits:

(a) The petition for the order to show cause hereinbefore mentioned and which has attached to it as an exhibit the contract which is the subject matter of this review, Exhibit "A";

(b) A copy of the order to show cause issued by your referee upon the filing of said petition, Exhibit "B";

(c) The order complained of, to-wit: the order requiring Clarence Ochs, Guy A. Kelley and P. L. Newcomb to account to the Committeemen of the Estate of Fred E. Keeler, Exhibit "C";

Within the time allowed by law Clarence Ochs, Guy A. Kelley and P. L. Newcomb, filed their petition for review, the original of which is attached hereto and transmitted herewith.

Dated this 9th day of June, 1937.

Hugh L. Dickson
Referee in Bankruptcy.

EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION.

In the Matter of)	
)	
FRED E. KEELER,	)	No. 23666-C
)	
A Debtor.)	

PETITION FOR ORDER TO SHOW CAUSE IN RE
HUNTINGTON BEACH WELL DIRECTED TO
CLARENCE OCHS, GUY A. KELLEY AND
P. L. NEWCOMB.

TO THE HONORABLE HUGH L. DICKSON,
REFEREE IN BANKRUPTCY:

Come now O. T. Gilbank and Hugo W. Romberg, and
respectfully show:

I.

That they are now, and at all times hereinafter men-
tioned were, the regularly appointed, elected, duly qualified
and acting Committee of the Estate of Fred E. Keeler,
a Debtor, appointed and elected pursuant to the terms
of an Extension Proposal accepted and approved under
the provisions of Section 74 of Chapter 8 of the Bank-
ruptcy Act of the United States of America.

II.

That on or about the 6th day of November, 1935, your
petitioners herein entered into a certain agreement with
Arthur G. Gage, a full, true and correct copy of said

agreement being hereunto annexed, marked Exhibit "A" and hereby made a portion of this petition.

III.

That your petitioners are informed and believe and upon such information and belief allege the fact to be that said agreement and all rights accruing thereunder have been assigned and transferred by said Arthur G. Gage to Clarence Ochs, Guy A. Kelley and P. L. Newcomb, who are now the owners and holders thereof.

IV.

That the Estate of Fred E. Keeler, a Debtor, and your petitioners, as the Committeemen thereof, have never at any time owned more than a 75% interest in the oil and gas produced from the well now located upon the premises described in said contract; that in making and entering into said contract your petitioners did not believe they were contracting, nor did their intend to contract, with reference to any oil or gas produced from said well other than that owned by said estate.

V.

That Clarence Ochs, Guy A. Kelley and P. L. Newcomb claim by virtue of said contract (Exhibit "A" hereof) that they are entitled to 60% of all oil and/or gas produced from said well instead of and in lieu of 60% of 75% of such oil and/or gas, and have retained 60% of the total proceeds of the oil and gas derived from said well, which has necessitated your petitioners' paying to the Pacific Electric Land Company and Associated Oil Company out of the 40% paid to your petitioners the moneys due said companies; that said Clarence Ochs, Guy A. Kelley and P. L. Newcomb claim they have the right so to do by virtue of said agreement (Exhibit "A" hereof).

WHEREFORE, your petitioners pray that upon the reading and filing of this petition an order may be made directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb, commanding them, and each of them, to appear at a time and place to be named in said order, then and there to show cause, if any they have, why they should not be required to account to your petitioners for 15% of the oil and/or gas produced by them from said well, being the difference between 60% of the total production of said well and 60% of 75% of the production of said well.

O. T. Gilbank

Hugo W. Romberg

Petitioners

Ben S. Hunter

Attorney for Petitioners.

EXHIBIT "A"

AGREEMENT

THIS AGREEMENT, made and entered into at Los Angeles, California, upon this 6th day of November, 1935, by and between H. W. ROMBERG and O. T. GILBANK, as Committeemen of the Estate of Fred E. Keeler, appointed pursuant to the Extension Proposal made, accepted and approved pursuant to Section 74 of the Bankruptcy Act of the United States of America, hereinafter referred to as First Party, and ARTHUR G. GAGE, hereinafter referred to as Second Party,

WITNESSETH:—

WHEREAS, First Party is the owner of the following described real property:

Lots One (1), Three (3), Five (5) and Seven (7), in Block 219 of "Huntington Beach, Seventeenth Street Section", in the City of Huntington Beach, County of Orange, State of California, as per map thereof recorded in Book 4, at page 10, of Miscellaneous Maps, records of said Orange County;

EXCEPTING therefrom an undivided one-fourth of all minerals contained in said real property, including but not limited to oil, gas and other hydrocarbon substances, as reserved in the deed from Pacific Electric Land Company, a corporation, to Hugo W. Romberg and O. T. Gilbank, as Committeemen for the Estate of Fred E. Keeler, dated August 14, 1935, and filed for record August 30, 1935, in the office of the County Recorder of said Orange County; subject to:

1. Taxes for the fiscal year 1935-1936, a lien;

2. An oil and gas lease entered into on April 3, 1926, by and between Pacific Electric Land Company, a California corporation, as lessor, and E. J. Miley, as lessee, for a term of twenty years, beginning April 3, 1926, and ending April 2, 1946, upon the terms and conditions specified in said lease, which was recorded May 1, 1926, in Book 58, at page 116, of Official Records in the office of the County Recorder of said Orange County.

3. Easements for pipelines, light and power lines, rights of ingress and egress and the right to use so much of the surface of said land as may be necessary for the purpose of entering, taking, saving, storing, removing

and transporting all minerals contained in said property; and conditions and covenants relating to the production and disposition of such minerals, all as reserved, imposed and made in and by the deed from Pacific Electric Land Company, a corporation, to Hugo W. Romberg and O. T. Gilbank, as Committeemen for the Estate of Fred E. Keeler, dated August 14, 1935, and filed for record August 30, 1935'; and

WHEREAS, First Party is the owner of the oil and gas lease hereinabove described in so far as said lease affects the real property hereinbefore described; and

WHEREAS, First Party is the owner of certain machinery and equipment located on said property, including, among other things, a derrick and certain casing which is now in the well upon said property (condition of said personal property and the extent thereof being known to Second Party); and

WHEREAS, there is now upon the land and premises above described an oil well, which said oil well has not been operated for a period of more than a year, and will in the opinion of the parties to this agreement require certain labor and expense before the same can be placed upon production:

NOW, THEREFORE, in consideration of the premises, the parties hereto have agreed and do hereby agree as follows:

1. Second Party agrees that he will immediately and within a period of not to exceed five (5) days from date hereof, enter upon the land and premises hereinabove described, and at his own cost and expense and in a workmanlike manner do all things that may be necessary in order to place said well upon production, furnishing there-

for, and at his own expense, such tools and equipment as may be necessary to place said well upon production and to operate the same.

2. It is further agreed that upon said well being placed upon production, Second Party will operate the same for the purpose of making a test, and in a proper manner, for a period of thirty (30) days, during which time Second Party shall furnish to First Party daily run sheets showing the amount of oil produced and the foreign substances therein contained.

3. Upon the expiration of said thirty-day period said Second Party shall have the right and option, upon a five (5) days' notice to First Party, to either remove from said well and said property all tools and equipment placed by him thereon, or to continue to operate said well so long as the same shall produce oil and/or gas in commercial quantities.

4. In the event said Second Party shall elect to continue to operate said well he shall do so in a workmanlike manner and at his own cost and expense, but shall be entitled to receive and retain sixty per cent (60%) of the net proceeds of all oil and gas produced, saved and sold from said premises.

5. It shall further be the duty of said Second Party, at the option of First Party, to deliver said First Party's forty per cent (40%) royalty in kind (said option, however, not to be exercised oftener than once every six months); or said Second Party shall sell and dispose of First Party's oil and gas together with his own but in the name of said First party, and the moneys derived

from the sale of First Party's oil and gas shall be paid by the purchasing company directly to said First Party.

6. Said Second Party shall promptly pay all bills for labor and/or materials furnished on or used in connection with the operation of said well, and the failure so to do shall entitle First Party to cancel this agreement by giving Second Party a ten (10) days' notice in writing of its election so to do.

7. Said First Party shall have the right at all times to keep posted upon said premises a notice in writing stating that it will not be responsible for any labor or materials furnished to Second Party.

8. Upon the placing of said well upon production by Second Party, or at any time thereafter, First Party shall have the right to sell any materials, tools or equipment owned by it and on said premises which are not necessary to the proper operation and maintenance of said well.

9. In the event that Second Party shall not elect to continue to operate said well, as in Paragraph 3 hereof provided, but shall elect on the other hand to remove from said well and said property all tools and equipment placed by him thereon, then and in that event and before he shall have the right to remove any of such tools and equipment, the Second Party shall remove from the well and place in the derrick upon said property all tubing and rods belonging to First Party and used by him, and he shall also repair and restore to the condition that it

is now in all other machinery, tools and equipment owned by First Party and used by Second Party.

10. The rights and privileges herein granted by First Party to Second Party do not include the exclusive right to use the property hereinbefore described, and any portion of the same not necessary to the proper operation and maintenance of said oil well may be used or leased by said First Party the same as though this agreement had not been entered into; it being expressly understood that it is the intention of First Party, in the event they have an opportunity so to do, to lease said real property to parties other than Second Party for the purpose of having the same drilled for oil, but that such lease if made shall be restricted to the use of said property by said lessees in a manner that will not interfere with the operation and maintenance of said well by said Second Party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

(SIGNED) H. W. ROMBERG

and

O. T. GILBANK

Committeemen of the Estate of
Fred E. Keeler, a Debtor

First Party

(SIGNED) ARTHUR G. GAGE

Second Party.

EXHIBIT "B"

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION.

IN THE MATTER OF)	
	(
FRED E. KEELER,	)	No. 23666-C
	(
a Debtor.)	

ORDER TO SHOW CAUSE DIRECTED TO CLAR-
ENCE OCHS, GUY A. KELLEY AND P. L.
NEWCOMB RE HUNTINGTON BEACH WELL.

Upon reading the verified petition of O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, under the provisions of Section 74 of the Bankruptcy Act of the United States of America, on file herein, and good cause appearing therefrom:

IT IS ORDERED that CLARENCE OCHS, GUY A. KELLEY and P. L. NEWCOMB appear before the undersigned Referee in Bankruptcy upon the 30th day of March, 1937, at the hour of ten o'clock a. m., at Room 613 H. W. Hellman Building, 354 South Spring Street, Los Angeles, California, then and there to show cause,

if any they have, why they should not be required to account to O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, for the proceeds of 15% of the oil and/or gas produced and sold by them from the well upon the land described in Exhibit "A" of the petition on file herein.

IT IS FURTHER ORDERED that a copy of said petition attached to a copy of this order be served on Clarence Ochs, Guy A. Kelley and P. L. Newcomb at least five days prior to the hearing on this order to show cause.

IT IS FURTHER ORDERED that this order to show cause need not be served by the United States Marshal but may be served by any citizen of the United States over the age of eighteen years.

Done in open Court this 16th day of March, 1937.

Hugh L. Dickson
REFEREE IN BANKRUPTCY.

EXHIBIT "C"

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION.

IN THE MATTER OF)	
)	
FRED E. KEELER,	)	No. 23666-C
)	
a Debtor.)	

ORDER DIRECTING CLARENCE OCHS, GUY A.
KELLEY and P. L. NEWCOMB TO ACCOUNT
RE HUNTINGTON BEACH WELL.

O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, having heretofore filed a petition praying that an order to show cause be issued directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb, requiring them, and each of them, to show cause, if any they have, why they should not be required to account to the petitioners for 15% of the oil and gas produced, saved and sold from that certain oil and gas well located in Huntington Beach, Orange County, California, upon those certain lands and premised more particularly described as follows:

Lots One (1), Three (3), Five (5) and Seven (7), in Block 219 of "Huntington Beach, Seventeenth Street Section," in the City of Huntington Beach, County of Orange, State of California, as per map thereof recorded in Book 4, at page 10, of Miscellaneous Maps, records of said Orange County;

EXCEPTING therefrom an undivided one-fourth of all minerals contained in said real property, including

but not limited to oil, gas and other hydrocarbon substances, as reserved in the deed from Pacific Electric Land Company, a corporation, to Hugo W. Romberg and O. T. Gilbank, as Committeemen for the Estate of Fred E. Keeler, dated August 14, 1935, and filed for record August 30, 1935, in the office of the County Recorder of said Orange County; and

Said order to show cause as prayed for having been issued and service thereof made upon Clarence Ochs, Guy A. Kelley and P. L. Newcomb in the manner and form provided in said order; and

Said order to show cause coming on regularly to be heard upon the 30th day of March, 1937, before the Honorable Hugh L. Dickson, Referee in Bankruptcy, the petitioners, O. T. Gilbank and Hugo W. Romberg, being personally present in Court and represented by their counsel, Ben S. Hunter, the Debtor being represented by his counsel, Buy Richards Crump; and the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb being personally present and represented by their counsel, John W. Carrigan, and

All parties having announced upon the calling of said matter that they were ready for trial, and oral and documentary evidence having been introduced and the cause having been argued by counsel and submitted to the Court for its decision and the Court having fully considered the same, now finds that Clarence Ochs, Guy A. Kelley and P. L. Newcomb are the successors in interest of Arthur G. Gage, who upon the 6th day of November, 1935, entered into a contract with O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, for the operation and maintenance of the oil and gas well hereinbefore described,

and as such successors in interest of said Arthur G. Gage are in actual possession of said land and premises and are receiving and have received the total proceeds of the oil and gas produced, saved and sold therefrom; that by the terms of said contract the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb are entitled to retain and receive as compensation for the things to be done by them under said contract 60% of 75% of the total net proceeds, namely, 45% of the total net proceeds of said oil and gas, and are obliged to account for the balance of such net proceeds; and that the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb have accounted to said O. T. Gilbank and Hugo W. Romberg, as such Committeemen, the petitioners herein, for only 45% of said proceeds and have retained and kept the balance of the proceeds for their own use and benefit; WHEREFORE,

IT IS ORDERED that you, Clarence Ochs. Guy A. Kelley and P. L. Newcomb, do account for and pay over to O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, the 15% of the proceeds derived from the sale of oil and gas produced by said well and not heretofore accounted for by you to them.

Done in open Court this day of April, 1937.

Hugh L. Dickson
REFEREE IN BANKRUPTCY

APPROVED AS TO FORM:

Guy Richards Crump
Attorney for Debtor.

John W. Carrigan
Attorney for Clarence Ochs, Guy A. Kelley and
P. L. Newcomb.

[TITLE OF COURT AND CAUSE.]

PETITION TO REVIEW REFEREE'S ORDER.

To the HONORABLE HUGH L. DICKSON, Referee
in Bankruptcy:

The petition of Clarence Ochs, Guy A. Kelley and
P. L. Newcomb, respectfully shows:

I.

That on the 16th day of March, 1937, an Order to Show Cause based upon the petition of the Committeemen of the Estate of Fred E. Keeler, a Debtor, in the above entitled matter, directed your petitioners, to appear before this Court on the 30th day of March, 1937, and to show cause, if any they had, why they should not be required to account to O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a debtor, for the proceeds of 15% of the oil and/or gas produced and sold by them from the land described in Exhibit "A" of the petition for order to show cause on file herein;

That the hearing on said order duly and regularly came on for hearing on the 30th day of March, 1937; that your petitioners at said time appeared in person, and by John W. Carrigan, Esq., their attorney; that said Committeemen appeared at said time in person and by Ben S. Hunter, Esq., their attorney; that the Debtor was represented by his counsel, Guy Richards Crump, Esq.;

II.

That thereafter and on the 9th day of April, 1937, this Court made and entered the following order of which your petitioners complain, as hereinafter set forth:

The Referee therefore makes the following order:

“O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, having heretofore filed a petition praying that an order to show cause be issued directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb, requiring them and each of them, to show cause, if any they have, why they should not be required to account to the petitioners for 15% of the oil and gas produced, saved and sold from that certain oil and gas well located in Huntington Beach, Orange County, California, upon those certain lands and premises more particularly described as follows:

Lots One (1), Three (3), Five (5) and Seven (7), in Block 219 of ‘Huntington Beach, Seventeenth Street Section,’ in the City of Huntington Beach, County of Orange, State of California, as per map thereof recorded in Book 4, at page 10, of Miscellaneous Maps, records of said Orange County;

EXCEPTING therefrom an undivided one-fourth of all minerals contained in said real property, including but not limited to oil, gas, and other hydrocarbon substances, as reserved in the deed from Pacific Electric Land Company, a corporation, to Hugo W. Romberg and O. T. Gilbank, as Committeemen for the Estate of Fred E. Keeler, dated August 14, 1935, and filed for record August 30, 1935, in office of the County Recorder of said Orange County; and

Said order to show cause as prayed for having been issued and service thereof made upon Clarence Ochs, Guy A. Kelley and P. L. Newcomb in the manner and form provided in said order; and

Said order to show cause coming on regularly to be heard upon the 30th day of March, 1937, before the Honorable Hugh L. Dickson, Referee in Bankruptcy; the petitioners, O. T. Gilbank and Hugo W. Romberg being personally present in Court and represented by their counsel, Ben S. Hunter; the Debtor being represented by his counsel, Guy Richards Crump; and the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb being personally present and represented by their counsel, John W. Carrigan; and

All parties having announced upon the calling of said matter that they were ready for trial, and oral and documentary evidence having been introduced and the cause having been argued by counsel and submitted to the court for its decision and the Court having fully considered the same, now finds that Clarence Ochs, Guy A. Kelley and P. L. Newcomb are the successors in interest of Arthur G. Gage, who upon the 6th day of November, 1935, entered into a contract with O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, for the operation and maintenance of the oil and gas well hereinbefore described, and as such successors in interest of said Arthur G. Gage are in actual possession of said land and premises and are receiving and have received the total proceeds of the oil and gas produced, saved and sold therefrom; that by the terms of said contract the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb are entitled to retain and receive as compensation for the things to be done by them under said contract 60% of 75% of the total net proceeds, namely, 45% of the total net proceeds of said oil and gas, and are obliged to account for the balance of such net proceeds; and that the said Clarence Ochs,

Guy A. Kelley and P. L. Newcomb have accounted to said O. T. Gilbank and Hugo W. Romberg, as such Committeemen, the petitioners herein, for only 45% of said proceeds and have retained and kept the balance of the proceeds for their own use and benefit: WHEREFORE,

IT IS ORDERED that you, Clarence Ochs, Guy A. Kelley and P. L. Newcomb, do account for and pay over to O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, the 15% of the proceeds derived from the sale of oil and gas produced by said well and not heretofore accounted for by you to them.

Done in open Court this 9th day of April, 1937.

HUGH L. DICKSON,
REFEREE IN BANKRUPTCY."

III.

That said order was and is erroneous in that it is not supported by the findings of fact and/or conclusions of law, and that it is based upon findings of fact and conclusions of law which are not supported by the evidence adduced at said hearing or by law; that the findings of fact upon which said order is based, and which are not supported by the evidence presented at said hearing and which do not support the said order are as follows:

"* * * * * that Clarence Ochs, Guy A. Kelley and P. L. Newcomb are the successors in interest of Arthur G. Gage, who upon the 6th day of November, 1935, entered into a contract with O. T. Gilbank and Hugo W. Romber, as Committeemen of the Estate of Fred E. Keeler, for the operation and maintenance of the

oil and gas well hereinbefore described, and as such successors in interest of said Arthur G. Gage are in actual possession of said land and premises and are receiving and have received the total proceeds of the oil and gas produced, saved and sold therefrom; that by the terms of said contract the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb are entitled to retain and receive as compensation for the things to be done by them under said contract 60% of 75% of the total net proceeds, namely, 45% of the total net proceeds of said oil and gas, and are obliged to account for the balance of such net proceeds; and that the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb have accounted to said O. T. Gilbank and Hugho W. Romberg, as such Committeemen, the petitioners herein, for only 45% of said proceeds and have retained and kept the balance of the proceeds for their own use and benefit;"

IV.

That there was no evidence adduced at said hearing to sustain that part of the findings which reads as follows:

"* * * * * that by the terms of said contract the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb are entitled to retain and receive as compensation for the things to be done by them under said contract 60% of 75% of the total net proceeds, namely, 45% of the total net proceeds of said oil and gas, and are obliged to account for the balance of such net proceeds: and that the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb have accounted to said O. T. Gilbank and Hugo W. Romberg, as such Committeemen, the petitioners herein, for only 45% of said proceeds and have retained and kept the balance of the proceeds for their own use and benefit;"

V.

That the evidence adduced at said hearing conclusively shows that your petitioners are entitled to receive 60% of 100% of the net proceeds of all gas and oil produced, as provided for in paragraph four of said Agreement, which reads as follows, to-wit:

“In the event said Second Party shall elect to continue to operate said well he shall do so in a workmanlike manner and at his own cost and expense, but shall be entitled to receive and retain sixty per cent (60%) of the net proceeds of all oil and gas produced, saved and sold from said premises.”

VI.

THE TESTIMONY INTRODUCED AT THE HEARING DOES NOT SUPPORT THE FINDINGS.

Arthur G. Gage, upon direct examination, testified as follows: (Page 8 of transcript, Line 24).

“A. * * * * * The other parties had given up the well and had found that it had 300 barrels of water to pump, instead of about 50-50. I said, in talking to Mr. Gilbank, that I was still interested in the proposition, but not in the former—because of the excessive water, and that I couldn’t produce the property unless I got 60 per cent of the oil on the premises. He then sent me over to Mr. Hunter to have a contract drawn, and this contract was drawn as it is here, at that time. In the course of a few weeks I had disposed of the property and notified the purchasing agent to not pay any royalties to

anybody, and the man or men that I had sold to happened to come in and negotiated and talked to them about it. I went with Holoday to Mr. Hunter's office and told him that Mr. Gilbank had said we had drawn a poor contract, that it was ambiguous, and Mr. Hunter said it wasn't ambiguous, but meant that I was to get 60 per cent and the receiver was to get 15 per cent, and the Pacific Electric Land Company 25 per cent."

Page 9, line 20 of Transcript:

"The Referee: Well, have you been receiving 60 per cent of all of the oil produced from that well, you or your assignee?

The Witness: Yes, sir.

The Referee: Did you personally receive any of it?

The Witness: Yes, sir, I did."

Page 11, Line 4 of Transcript:

The Referee: What did you understand this second paragraph 'excepting therefrom an undivided one-fourth of all minerals obtained from said property'?

The Witness: Well, I understood just the same as when a landowner claims one-sixth or an eighth; there was still plenty left to pay me 60 per cent.

The Referee: Twenty-five per cent was going to some person under this clause?

The Witness: I wasn't interested, so long as I got 60 per cent of the whole."

Page 11, Line 17 of Transcript:

CROSS EXAMINATION.

By Mr. Hunter:

Q. Before signing the contract, you submitted it to your attorney for approval, didn't you?

A. No.

Q. Well, didn't you make the statement, in both Mr. Gilbank's and my presence, that you wanted a day or two on it, so you could submit it to your attorney?

A. I may have; I have no recollection of it.

Q. Wasn't there an interval of a couple of days between the time the contract was drawn and the time it was signed?

A. There may have been. I told you I had known you since we were boys together, and that I was relying on you and taking your word more than anybody's.

Q. Isn't it a fact that you made a number of proposals prior to this contract?

A. Yes, sir.

Q. A number of proposals by form letters?

A. Yes, sir.

Q. And isn't it true in each of those proposals, whatever the nature of the proposal was, it provided for the payment to the Pacific Electric Land Company, and then a division?

A. Well, there were several different propositions.

Q. Isn't that a fact, the written proposals—

Mr. Carrigan: The written proposals are the best evidence; I have them here, copies of them.

The Referee: That would be the best evidence."

INTRODUCTION OF RESPONDENT'S EXHIBITS 1, 2 and 4.

Page 13, Line 6 of Transcript:

"Mr. Carrigan: Mr. Gilbank, do you stipulate that Mr. Holoday was in your employ and negotiated at that time with Mr. Gage, isn't it?

Mr. Hunter: That is correct.

Page 13, Line 21 of Transcript:

Q. By Mr. Carrigan: Now, your proposals in both of these letters provided in the inception that you were to receive 66-2/3 of all oil produced; why was that?

A. Those propositions cover an entirely different set of conditions; in one, we were to receive a part of the the operating expenses.”

Page 14, Line 1 of Transcript:

Q. Was that on account of water being in the well?

A. They gave me records that showed there was about 40 barrels of oil and 60 barrels of water, and we were dealing along, making various proposals and counter-proposals, up to the time of the deal with the Superior Oil, without notifying me, and when they blew up they called me in and we made this last one.”

PETITIONERS' EXHIBIT "A" INTRODUCED IN EVIDENCE.

Page 14, Line 21, of Transcript.

Page 15, Line 9 of Transcript:

Q. By Mr. Carrigan: You stated that when you went back to Mr. Hunter, and you told him that Mr. Gilbank was contending the contract should read '60-75', what did Mr. Hunter say in reference to Mr. Gilbank's constructions?

A. He said they were all wet.

Q. He said that Mr. Gilbank was all wet?

A. Yes, that that contract was not ambiguous, and that it meant 60 per cent to the operator, 15 per cent to the Referee, and 25 per cent to the Associated Oil.”

MR. J. E. HOLODAY

upon

DIRECT EXAMINATION,

testified as follows:

Page 18, Line 12, of Transcript:

“Q. Mr. Holoday, were you present with Mr. Gage, after this lease was executed, when he called on Mr. Hunter, the attorney representing Mr. Gilbank?”

A. Yes, sir, on about February 26th, 1936, I believe.

Q. Were the terms and conditions of the lease discussed at that time?

A. I think either I asked Mr. Hunter, or Mr. Gage asked Mr. Hunter, if he would interpret this contract, and, as I recall, Mr. Hunter said it was a 60-40 contract, and that out of the 40 per cent 25 per cent would have to be paid to the oil company, which would net 15 to the estate; that is my memory at this late date.”

MR. P. L. NEWCOMB,

on

DIRECT EXAMINATION,

testified as follows: (Page 21, line 6 of Transcript)

“Q. Mr. Newcomb, you are one of the parties ordered to show cause on this date?”

A. I am.”

* * * * *

Page 22, line 3 of Transcript:

“The Referee: Yes. Maybe you can tell me—on what basis do your records show you were accountable to Mr. Gilbank?”

The Witness: Always on the basis of 60-40.

The Referee: On 60 per cent of the total production?

The Witness: Yes, sir.

The Referee: And not 60 per cent of 75 per cent?

The Witness: Certainly not.

The Referee: When was the first time that Mr. Gilbank and Mr. Romberg made the suggestion to you that you hadn't accounted to them for the oil in accordance with the contract with Mr. Gage?"

The Witness produced letter and fixes the date as of Jan. 15, 1937.

* * * * *

Page 23 of Transcript. The witness testified that the first remittances were made to the Committeemen on October 30, 1936, on the basis of 60-40 per cent of the production.

Page 23, Line 24 of Transcript.

"The Referee: And you didn't hear any protest from Mr. Gilbank or Mr. Romberg, the Committeemen of the Keeler estate, until you received this letter dated January 15, 1937?"

Page 24, Line 1 of the Transcript.

The Witness: That is correct; never anything formal, simply a suggestion, and that letter was written, that we thought placed some conflict on it."

Page 25, Line 1 of Transcript.

The run sheets of the amount of oil produced and the payment of the proceeds on the basis of the 60-40 introduced in evidence.

Page 27, Line 9 of Transcript.

The witness testified that on January 15, 1937, he had a conversation with Mr. Gilbank at the latter's office, and that at that time there was no specific mentioned made of percentages and no question raised regarding it directly. Witness stated that his purpose of going to Mr. Gilbank's office was to make payment of royalties.

Page 28, Line 1 of Transcript.

"Q. Just relate the conversation that took place.

A. The essential part of it was, Mr. Gilbank suggested that possibly we knew we were facing some dispute as to the interpretation we put upon the contract, and that was the first notice I had had from anybody connected with the estate that there was any difference of opinion.

Q. What was said about Mr. Keeler, if anything?

A. Mr. Gilbank indicated that he was perfectly satisfied with the conditions under which the oil had been operated, the performance on our part of the contract, and expressed the opinion that they would not be inclined to take any action against us, but it was anticipated that the estate would in a few months come out of receivership

and enhance the value of some of the estate in receivership, and if that occurred that Mr. Keeler would attack us, that Mr. Keeler was a hard man to deal with and we might anticipate being attacked.

The Referee: On this oil contract?

The Witness: Yes, on our lease. He didn't say for what reason we would be attacked, or on what basis, but that we would be attacked."

* * * * *

Page 29, Line 20, of Transcript.

"Q. Was there anything said about the contract, the way it was drawn up by Mr. Gilbank?

A. Well, the only remark that was direct reference to the contract was Mr. Gilbank's statement that he should have drawn the contract himself."

Page 30, Line 8 of Transcript.

The witness testified that the partnership's gross receipts from the well amounted to \$3361, and that the gross expenditures amounted to \$4398. Included in this latter sum was the royalty paid to the Keeler Estate, royalty charges and equipment.

Page 30, line 18 of Transcript.

Witness testified that in addition to their loss of \$1037, they had invested \$4500., which has not been returned, and that the only offset is that of \$500., to their credit in the bank.

Page 31, Line 18 of Transcript.

“Q. By Mr. Carrigan: Now, what was the condition of the well when you took it over, Mr. Newcomb? I am going to shorten this, if I can.

The Referee: I don't see that that is material at all. All you have before me is the construction of this contract. It doesn't make any difference whether he spent \$90,000 and took out \$9,000,000.

Q. By Mr. Carrigan: Was the money spent on the well necessary for its production?

The Referee. I don't think that is material. I am on the interpretation of this—”

Page 32, Line 20 of Transcript.

The Witness testified that they paid on the same basis as their predecessors in interest had, to-wit: 40-60, and remittances were made by the Dehydrating Company.

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CROSS EXAMINATION

By Mr. Hunter.

Page 34, Line 10 of Transcript:

The witness testified that he had no conference with Mr. Holoday before he took over the Gage lease. That he discussed with Mr. Holoday purchasing the estate's interest in the property.

Page 35, Line 12, of Transcript.

The witness testified that he did not recall having had any conversations with Mr. Holoday concerning the dis-

pute between Gage and the estate as to the construction of the contract. The first notice he received about the dispute was from people who were taking the oil called attention to the fact that these letters were in existence. Witness stated that he did not recall Mr. Holoday calling that to his attention.

WHEREFORE, your petitioners being aggrieved because of said order, pray that the same may be reviewed, as provided for in the Acts of Congress relating to Bankruptcy, General Order No. 27, and Rules of this Court No. 84, and that this Court declare and order that said petitioners as the successors in interest of Arthur G. Gage, are entitled to receive 60 per cent of the net proceeds of all oil and gas produced, saved and sold from the premises, and that H. W. Romberg and O. T. Gilbank, as Committeemen of the Estate of Fred E. Keeler, a Debtor, are entitled to receive 15 per cent, and the Pacific Electric Land Company *are* entitled to receive 25 per cent, in accordance with that certain Agreement dated November 6, 1935, entered into by and between H. W. Romberg and O. T. Gilbank, as Committeemen of the Estate of Fred E. Keeler, appointed pursuant to the Extension Proposal made, accepted and approved pursuant to Section 74 of the Bankruptcy Act of the United States of America, and Arthur G. Gage, and for such other relief as to the Court may seem meet and proper.

John W. Carrigan
Attorney for petitioners.

State of California,)
) ss.
 County of Los Angeles,)

John W. Carrigan, being by me first duly sworn, deposes and says that he is the attorney for the Petitioners in the above entitled action; that he has read the foregoing Petition to Review Referee's Order and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

John W. Carrigan

Subscribed and sworn to before me this 16th day of April, 1937.

[Seal]

C. M. Commins

Notary Public in and for the County of
 Los Angeles, State of California.

[Endorsed] Received copy of the within Petition to Review Referee's Order this 16 day of April, 1937. Ben S. Hunter—R. C. Attorney for O. T. Gilbank and Hugo W. Romberg. Guy Richards Crump (H. L.) Attorney for Fred E. Keeler, a Debtor.

Filed Apr 16, 1937 at 30 min. past 1 o'clock P. M.
 Hugh L. Dickson, Referee C. M. Commins, Clerk. C. M.
 C.

[Endorsed]: Filed R. S. Zimmerman Clerk 52 min.
 past 3:00 o'clock Jun 10 1937 P. M. By M. J. Sommer
 Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

REFEREE'S SUPPLEMENTAL CERTIFICATE ON
REVIEW.

I, HUGH L. DICKSON, one of the Referees in Bankruptcy at Los Angeles, California, hereby submit my Supplemental Certificate on Review:

That through inadvertence, in filing the original certificate dated the 9th day of June, 1937, there was omitted therefrom the reporter's transcript of proceedings on order to show cause, directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb, re Huntington Beach well, held on March 30, 1937.

The Referee transmits herewith the following document:

Reporter's transcript on proceedings on Order to Show cause, directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb, re Huntington Beach well, Tuesday, March 30, 1937.

DATED at Los Angeles, California, this 11th day of June, 1937.

· Hugh L. Dickson
Referee in Bankruptcy.

[Endorsed]: Filed R. S. Zimmerman, Clerk, 53 min. past 3 o'clock Jun 15, 1937 P. M. By F. Betz Deputy Clerk.

At a stated term, to-wit: The February Term A. D. 1937, of the District Court of the United States of America within and for the Southern District of California held at the Court Room thereof, in the City of Los Angeles on Monday, the 19th day of July in the year of our Lord one thousand nine hundred and thirty-seven.

Present: The Honorable Geo. Cosgrave District Judge.

In the Matter of	)	In Bankruptcy
	(
FRED E. KEELER,	)	No. 23666-C
	(	MINUTE
Debtor.	)	ORDER.

This cause having come before the Court on June 28, 1937 for hearing on petition and motion of Clarence Ochs, Guy A. Kelley and P. L. Newcomb to review the previous findings and order, pursuant to notice filed June 18, 1937; and having been argued by counsel and submitted on brief filed June 28, 1937 and to be filed 5 x 5, and said briefs having been filed and duly considered by the Court, upon consideration whereof, the Court now orders as follows:

Twenty-five per cent of the oil having been excepted, the parties to the contract never contracted with reference to it. The subject of the contract therefore is seventy-five per cent of the oil produced. (9 Cal. Jur. 322). I find myself compelled therefore to agree with the referee.

The petition for review is denied and decision of the referee confirmed.

Exception to Petitioners.

[TITLE OF COURT AND CAUSE.]

ORDER IN RE PETITION FOR REVIEW FILED
BY CLARENCE OCHS, GUY A. KELLEY AND
P. L. NEWCOMB.

The Petition for Review filed by Clarence Ochs, Guy A. Kelley, and P. L. Newcomb to review the order made by the Honorable Hugh L. Dickson upon the 9th day of April, 1937, came on regularly to be heard before this Court upon Monday, the 28th day of June, 1937, John W. Carrigan appearing in behalf of petitioners and Ben S. Hunter appearing in behalf of O. T. Gilbank and Hugo W. Romberg, the Committeemen of the Estate of Fred E. Keeler, a debtor, and the matter having been argued orally and at the request of the parties submitted on briefs, and briefs having been filed by the respective parties to this proceeding, and the Court having fully considered the oral arguments and the briefs filed and having reviewed the testimony, and it appearing therefrom that the Findings of Fact made by the Honorable Hugh L. Dickson are correct and that his order made pursuant thereto is in accordance with the law;

IT IS ORDERED that said Petition for Review be and the same hereby is denied and the decision rendered herein by the Honorable Hugh L. Dickson be and the same hereby is confirmed.

IT IS FURTHER ORDERED that O. T. Gilbank and Hugo W. Romberg, as the Committeemen of the Estate of Fred E. Keeler, a debtor, recover from said petitioners their costs in this matter expended.

Dated: July 28, 1937.

Geo. Cosgrave
Judge

APPROVED AS TO FORM:

John W. Carrigan
Attorney for Petitioners

Ben S. Hunter
Attorney for Respondents.

[Endorsed]: Decree entered and recorded 7/29/37
R. S. Zimmerman Clerk, By R. B. Clifton Deputy Clerk.

Filed R. S. Zimmerman Clerk 56 min. past 2:00 P. M.
O'clock Jul 28, 1937 By M. R. Winchell Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION.

It is hereby stipulated by and between Ben S. Hunter, Esq., attorney for O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a debtor, and John W. Carrigan, Esq. attorney for Clarence Ochs, Guy A. Kelley and P. L. Newcomb, that the Bill of Exceptions heretofore, on the 10th day of August, 1937, served on attorney for O. T. Gilbank and Hugo W. Romberg and filed with the clerk of the above entitled Court on the 17th day of August, 1937, contains all the material evidence given and proceedings had on the trial of this action, and that the same may be approved, allowed, settled, and ordered filed, and made a part of the record herein by the Judge before whom this cause was tried, upon the filing of this stipulation, without further or other notice to the parties herein or their counsel.

Dated this 16th day of August, 1937.

Ben S. Hunter

Attorney for Committeemen

John W. Carrigan

Attorney for Ochs, Kelley and Newcomb.

[Endorsed]: Filed R. S. Zimmerman, Clerk 51 min.
past 2:00 o'clock Aug 17 1937 P.M. M. J. Sommer
Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ENGROSSED BILL OF EXCEPTIONS BY
PETITIONERS.

BE IT REMEMBERED that heretofore, to-wit: on the 28th day of June, 1937, the petition filed by Clarence Ochs, Guy A. Kelley and P. L. Newcomb, to review the testimony and order made by the Honorable Hugh L. Dickson, Referee in Bankruptcy, on the 9th day of April, 1937, came on regularly to be heard before his Honor, George Cosgrave, sitting as Judge of said Court without a jury;

John W. Carrigan appeared as attorney for Clarence Ochs, Guy A. Kelley and P. L. Newcomb, the petitioners, and Ben S. Hunter appeared as attorney for O. T. Gilbank and Hugo W. Romberg, the Committeemen of the Estate of Fred E. Keeler, a debtor, respondents;

Honorable Hugh L. Dickson having heretofore duly prepared and filed herein his certificate on review and supplemental certificate on review, including therein the reporter's transcript containing the evidence and the proceedings theretofore taken before him, and the matter having been submitted to the Court for decision, the Court on the 28th day of July, 1937, made its order denying said petition for review, and confirmed the decision rendered by the Honorable Hugh L. Dickson, and said order was thereupon on the 28th day of July, 1937, entered;

That on the 16th day of March, 1937, Honorable Hugh L. Dickson, Referee in Bankruptcy issued and served on Clarence Ochs, Guy A. Kelley and P. L. Newcomb, an Order to appear and Show Cause on the 30th day of

March, 1937, at the hour of ten o'clock A. M., at Room 613 H. W. Hellman Building, 354 South Spring Street, Los Angeles, California, why they should not be required to account to O. T. Gilbank and Hugo W. Romberg, as Committeemen of the Estate of Fred E. Keeler, a Debtor, for the proceeds of 15% of the oil and/or gas produced and sold by them from the well upon the land described in Exhibit "A" of the petition on file herein;

Whereupon, on the 30th day of March, 1937, the cause, coming on regularly to be heard before Honorable Hugh L. Dickson, the petitioners offered and introduced the following evidence and exhibits of evidence and objections and motions were made and rulings of said Referee were entered and exceptions taken by petitioners, to-wit:

(Testimony of Arthur Gage)

ARTHUR GAGE

witness called on behalf of petitioners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Carrigan:

My name is Arthur Gage.

I am the party that entered into this lease with the Committeemen. Before the lease was executed I held conversations over a period of six or eight months with Mr. Holoday. Mr. Holoday is in the Court Room. I negotiated with him in respect to the royalty that should be paid to the estate. I made some written propositions and negotiated back and forth and it dragged along for six or eight months. Then I was called into Mr. Gilbank's office and I found that they had made a deal with

(Testimony of Arthur Gage)

another party without notifying me, and I complained about them treating me that way. The other parties had given up the well and had found that it had 300 barrels of water to pump instead of about 50-50. In talking with Mr. Gilbank I said I was still interested in the proposition, but not in the former proposition—that I could not produce the property unless I got 60 per cent of the oil on the premises.

Mr. Gilbank then sent me over to Mr. Hunter's to have a contract drawn and this contract was drawn as it is here, at that time. In the course of a few weeks I disposed of the property and the men that I had sold to happened to come in and we talked about the lease. I went with Mr. Holoday to Mr. Hunter's office and told him that Mr. Gilbank had said we had drawn a poor contract; that it was ambiguous, and Mr. Hunter said it wasn't ambiguous, but meant that I was to get 60 per cent and the receiver was to get 15 per cent and the Pacific Electric Land Company 25 per cent. Subsequent to that, they had a meeting and called me over and Mr. Hunter informed me at the meeting that on re-reading the contract he changed his mind and meant something else.

Myself and assignees had been receiving 60 per cent of all the oil produced from that well. When the well showed 300 barrels of water, I turned it over to another party, but retained a 10 per cent interest in it. When I went to Mr. Hunter's office I told him that there was a controversy existing between Mr. Gilbank and myself in reference to the interpretation of the contract. My understanding with Mr. Gilbank was that I was to receive 60 per cent of all oil and gas produced. After Mr.

(Testimony of Arthur Gage)

Hunter drew the contract I read and signed it. I read the second paragraph which reads:

“* * * * * excepting therefrom an undivided one-fourth of all minerals obtained from said property.”

I understood it to be just the same as when a landowner claims a one-sixth or an eighth; there was still plenty left to pay me 60 per cent. Twenty-five per cent was going to some person under that clause; I wasn't interested so long as I got 60 per cent of the whole;

CROSS EXAMINATION.

By Mr. Hunter:

Witness testified: Before signing the contract I did not submit it to my attorney for approval. I may have stated that I wanted a day or two so I could submit it to my attorney, but I have no recollection of it. There may have been a couple of days between the time the contract was drawn and the time it was signed. I told you that I had known you since we were boys together; that I was relying on you and taking your word more than anybody's. It is a fact that I made a number of proposals prior to this contract. These proposals were in the form of letters, and they provided for the payment to the Pacific Electric Land Company and then a division. There were several different propositions.

Thereupon witness was handed a copy of a letter he received from Mr. Gilbank and the letter was introduced in evidence.

(Testimony of Arthur Gage)

Mr. Hunter stipulated at that time that Mr. Holoday was in the employ of Mr. Gilbank and Mr. Romberg as an agent and negotiated with Mr. Gage.

Letter received by Mr. Gage from Mr. Holoday dated March 1, 1935, introduced in evidence and marked Petitioners' Exhibit No. 1.

Petitioners' Exhibit No. 2, dated March 4, 1935, introduced in evidence.

DIRECT EXAMINATION.

By Mr. Carrigan:

Witness testified: My proposition in both of these letters provided that I was to receive $66\frac{2}{3}$ of all oil produced, but that was to cover an entirely different set of conditions; we were to receive a part of the operating expenses.

They gave me records that showed that there was about 40 barrels of oil and 60 barrels of water, and we were making various proposals and counter-proposals, when the Committeemen called me in and we made this last one.

By Mr. Hunter:

Witness testified: I remember writing a letter on March 5th, and of Mr. Holoday saying "we have lost our copy", and of making a copy in my office. The copy was made by my son.

(Testimony of Arthur Gage)

Mr. Hunter stated that a copy of this contract is set forth in full in the 5th report and account of the committee; the same was offered for approval by the Referee. Contract was introduced in evidence as Respondents' Exhibit "A".

By Mr. Carrigan:

The witness testified: When I went back to Mr. Hunter and told him what Mr. Gilbank was contending the contract should be read "60-75" he said that Mr. Gilbank was "all wet"—that the contract was not ambiguous; that it meant 60 per cent to the operator, 15 per cent to the Referee, and 25 per cent to the Associated Oil. Mr. Holoday was present with me at that time. He heard the conversation between myself and Mr. Hunter. The contract was drawn in Mr. Hunter's office. I do not remember where I signed it, but I was sent by Mr. Gilbank to Mr. Hunter's office to have the contract drawn.

Exhibit No. 2 of Petitioners is addressed to my son whose name is H. T. Gage. My son was going to take it over, but when he found out about the water he backed out. When the Superior took over the well, instead of finding 60 barrels of oil and 40 of water, they found 300 barrels of water, and those conditions make it harder for anyone to operate at a profit and it requires a greater percentage. It costs just as much to pump water as it does to pump oil. The Superior backed off and left the well. Water weighs eight pounds, 8.335; and oil weighs a little over 6 pounds, depending upon the gravity.

(Testimony of Mr. Holoday)

MR. HOLODAY.

witness called on behalf of the petitioners, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Carrigan:

Witness testified: I was employed by Mr. Gilbank to negotiate a lease on this oil well at Huntington Beach. I had negotiated with Arthur Gage and sometimes in the name of H. T. Gage, his son, but always with Arthur Gage.

In conducting my negotiations, I understood the estate had the right to make the lease subject to the 25 per cent royalty. I did not know who would have to pay it. It had to come out of the oil that came out of the ground on these premises. I was present with Mr. Gage after the lease was executed when he called on Mr. Hunter, the attorney representing Mr. Gilbank. That was on or about February 26, 1936, I believe. The terms and conditions of the lease were discussed. I think either I asked Mr. Hunter, or Mr. Gage asked Mr. Hunter, if he would interpret this contract, and as I recall, Mr. Hunter said it was a 60-40 contract, and that out of the 40 per cent, 25 per cent would have to be paid to the oil company, which would net 15 per cent to the estate. That is my memory at this late date.

(Testimony of Mr. Holoday)

I received instructions in writing on or about November 1st to contact Mr. Gage. I have a copy of those instructions with me. I took them out of the file. Shall I read it? In talking with Mr. Gage I showed him what my instructions were in writing. Mr. Gilbank gave me all my instructions in writing. I could not say that I showed these instructions to Mr. Gage, but I discussed them with him as I was instructed. There may have been discussions as to the cost of putting the well on productions, but there was nothing specifically mentioned as to how much it would cost; no one knows how much an oil well will cost. I did not know that there was water in the well. I didn't discuss the condition of the well with Mr. Gage. I don't think anybody knew what was in that well until they got to operating.

Going back to the conversation with Mr. Hunter and Mr. Gage in Mr. Hunter's office I don't recall Mr. Hunter saying that Mr. Gilbank was "all wet". The conversation was very short at that time, as I recall it, but I do recall, perfectly well, that Mr. Hunter stated that Mr. Gage was to get 60 per cent of all the oil and gas on the premises. It was 60-40, and Mr. Gage would get 60 per cent and the estate 40 per cent, out of which they would have to pay 25 per cent royalty, and have a net of 15 per cent left. It was a short conversation and not drawn out at all. When I say "the estate", I mean the Keeler estate.

(Testimony of P. L. Newcomb)

P. L. NEWCOMB.

witness called on his own behalf and on behalf of his partners, the petitioners herein, after being duly sworn, testified as follows:

By Mr. Carrigan:

I am one of the parties ordered to show cause here on this date. Clarence Ochs and Guy A. Kelley are my partners. We are operating this well. We took over the lease from Mr. Gage. We took over the lease in February or March, 1936. Our records show that we accounted for the royalties on the basis of 60-40—on 60% of the total production, and not 60% of 75%. The first time that Mr. Gilbank and Mr. Romberg made the suggestion to me that I had not accounted to them for the oil in accordance with the contract with Mr. Gage, was at the time I was in Mr. Gilbank's office, and he acknowledged the receipt of certain remittances. That was on January 15, 1937. I had made settlements with the Committeemen prior to that time. The first settlement occurred on October 30, 1936, and the amount represented 40 per cent.

We began to make remittances in October, 1936, on the basis of 60-40 of production, and we did not hear any protest from Mr. Gilbank or Mr. Romberg, the Committeemen of the Keeler Estate, until we received this letter dated January 15, 1937. That letter only asked for run tickets—the amount received for oil delivered to the Dehydrating Company, the purchaser of the oil. The letter of Jan. 15, 1937, only asked for run tickets. It was on that date that the interpretation of the lease was raised verbally. The sheet of the Dehydrating Com-

(Testimony of P. L. Newcomb)

pany that took this oil, shows how the proceeds were split up. It was dated February, 1936. The run was from January 30th to February 12, 1936, inclusive. Martin and Moore, assignees of Gage 50 per cent, Gage 10 per cent, Romberg and Gilbank, Committeemen for the Keeler Estate, 40 per cent. The total amount was \$182.71 taken in from the well.

The next sheet of the Keeler well was from February 21st to February 29th of that month, \$113.20 was received; disbursements, E. F. Moore 50 per cent, Romberg and Gilbank 40 per cent and H. T. Gage 10 per cent.

The oil from the 25th to the 27th of January, 1936, was \$67.43; disbursements: Martin and Moore 50 per cent, Gage 10 per cent and Romberg and Gilbank, receivers for the Keeler well, 26.97.

The above sheet containing the run of the oil and the disbursements to the respective parties was introduced and received in evidence by the Referee.

Witness testified:

Before we took it over the Dehydrating Company was making disbursements according to the instructions received from the estate. We made the payments direct to the estate, and the Dehydrating Company made a division according to the instructions received from the estate.

On or about January 15, 1937, I had a conversation with Mr. Gilbank at his office, 425 Title Insurance Building. There were no persons other than Mr. Gilbank and myself present. We did not discuss the 40-60 royalty.

(Testimony of P. L. Newcomb)

There was no specific mention made of the percentages at that time and no question raised regarding it directly. I went over to Mr. Gilbank's office to make payment of royalties. Mr. Gilbank suggested that possibly we knew we were facing some dispute as to the interpretation we put upon the contract, and that was the first notice I had had from anybody connected with the estate that there was any difference of opinion. Mr. Gilbank indicated that he was perfectly satisfied with the conditions under which the oil had been operated, the performance of our part of the contract, and expressed the opinion that they would not be inclined to take any action against us, but it was anticipated that the estate would in a few months come out of receivership and enhance the value of some of the estate in receivership, and if that occurred that Mr. Keeler would attack us; that he was a hard man to deal with and we might anticipate being attacked. Mr. Gilbank was referring to the Gage lease. He did not say for what reason we would be attacked or on what basis, but that we would be attacked. The royalties I handed to Mr. Gilbank represented 40 per cent of the proceeds on the sale of oil from that well.

The actual gross receipts were \$3361.00. This amount was received from oil and gas up to March 1, 1937. During that period we paid out \$4398.00. That represents what we paid to the Keeler Estate, the royalty charges and equipment amounting to \$1189.50, making in excess of expenditures \$1037., above what we took out of the well, and in addition to that we invested all our own money in this well \$4500. That has never been returned. We have \$500. in the bank. The partnership has never received any dividends whatsoever. What has

(Testimony of P. L. Newcomb)

been taken out of the well has been put back with the exception of \$600., which we have now to pay bills.

Question by Mr. Carrigan:

Now what was the condition of the well when you took it over, Mr. Newcomb? I am going to shorten this, if I can.

Referee:

I do not see that that is material at all. All you have before me is the construction of this contract. It does not make any difference whether he spent \$90,000 and took out \$9,000,000.

Letters written by Mr. Gilbank to the Dehydrating Company introduced in evidence and ordered filed by the Referee.

Witness testified:

I want to point out that the arrangement under which we continued to pay at the time we took over, was the one that had been established by our predecessors, and that was on the same basis, 40-60, and paid direct by this Dehydrating Company, and that maintained up to the time we found it desirable to sell to some other agency.

Question by Mr. Carrigan:

How long had this well stood idle before Mr. Gage took it over?

Mr. Hunter:

That is objected to as incompetent, irrelevant and immaterial.

(Testimony of P. L. Newcomb)

The Referee:

I don't think that has anything to do with it, Mr. Carrigan. As I understand it, no matter what the condition of the well was, or how long it took to clean it out, or what it was producing, the only question is whether these persons are to get 60 per cent of the whole or 60 per cent of the 75.

CROSS EXAMINATION

BY MR. HUNTER.

Witness testified:

I did not have any conversation with Mr. Holoday prior to the time we took over the Gage lease. I negotiated at one time through Mr. Holoday for the purchase of the estate's interest in the property. That occurred approximately a month or so after I had been interested in the Gage lease. I did not notify the Keeler estate that I had purchased an interest in the Gage lease, unless it was incidentally in conversation about purchasing their interest in the well. It might be that the first notice that the estate had that I had any interest in the lease, was in my talk with Mr. Holoday. I do not recall that Mr. Holoday told me of the dispute between Gage and the estate as to the construction of the contract. The first intimation I recall of it was when the people who were taking the oil called attention to the fact that these letters were in existence. I do not recall Mr. Holoday calling that to my attention.

Due exceptions were taken to the ruling of the Court. included herein all exhibits introduced in evidence before Honorable Hugh L. Dickson, Referee in Bankruptcy.

Thereupon on the 28th day of July, 1937, the time within which to serve and file a bill of exceptions was extended to and including August 20, 1937, by order of the Court upon stipulation of the parties in words and figures as follows:

"IT IS HEREBY STIPULATED AND AGREED by and between counsel for Clarence Ochs, Guy A. Kelley and P. L. Newcomb, the petitioners, and counsel for O. T. Gilbank and Hugo W. Romberg, the Committeemen of the Estate of Fred E. Keeler, a debtor, that subject to the approval and order of the Court, the time within which the petitioners herein may serve and file their proposed Bill of Exceptions herein is extended to and including August 20, 1937.

DATED this 28th day of July, 1937.

(Signed) Ben S. Hunter

Attorney for O. T. Gilbank and Hugo W. Romberg,
the Committeemen of the Estate of Fred E.
Keeler, a debtor,

458 South Spring Street,
Los Angeles, California

(Signed) John W. Carrigan

Attorney for Clarence Ochs, Guy A. Kelley and
P. L. Newcomb, the Petitioners.

510 West Sixth Street,
Los Angeles, California.

IT IS SO ORDERED this 29th day of July, 1937.

Wm. P. James

United States District Judge

Signing in the absence of Judge Cosgrave."

By reason of Rule No. 11 of the United States District Court for this Southern District of California the term of this Court is automatically extended to comprise a period of three calendar months beginning on the first Tuesday of the month in which a judgment is entered for the purpose of making and filing bills of exception and of making any and all motions necessary to be made within the term at which judgment is entered, thus extending the term of this Court in the instant case to October 5, 1937.

Forasmuch as the matters and things above set forth do not fully appear of record, the said petitioners tender and present the foregoing as their bill of exceptions in said cause and pray that the same may be approved, allowed and settled and made a part of the record in this case by this Court, pursuant to the law in such cases.

Which is accordingly done this 17th day of August 1937.

Leon R. Yankwich

Judge of the United States District Court for the
Southern District of California, Central Division.

For Judge Cosgrave who is out of the District

[Endorsed]: Received copy of the within Proposed Bill of Exceptions this 10th day of August, 1937. Ben S. Hunter Attorney for O. T. Gilbank and Hugo W. Romberg, Committeemen of the Estate of Fred E. Keeler, a Debtor.

Filed R. S. Zimmerman, Clerk at 52 min. past 2 o'clock Aug. 17, 1937 P. M. By M. J. Sommer, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

In the Matter of)	
	(	In Bankruptcy
FRED E. KEELER,	)	No. 23,666-C
	(	PETITION
a Debtor.	)	FOR APPEAL.

TO THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, CENTRAL DIVISION AND
TO HONORABLE GEORGE COSGRAVE,
JUDGE THEREOF:

Your petitioners, Clarence Ochs, Guy A. Kelley and P. L. Newcomb, in the above entitled cause, feeling aggrieved by the order rendered herein and entered on the 28th day of July, 1937, pray that an appeal may be allowed from said order to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith in order that the errors may be corrected, and petitioners further pray that a citation be issued, as by law provided, commanding the respondent to appear be-

fore said Circuit Court of Appeals and that an order be made fixing the amount of the cost bond which petitioners shall give and furnish upon said appeal and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said Circuit Court of Appeals.

Dated this 17th day of August, 1937.

John W. Carrigan
Counsel for Clarence Ochs, Guy A. Kelley and
P. L. Newcomb, Petitioners,
510 West Sixth Street, Los Angeles, Calif.

[Endorsed]: Filed R. S. Zimmerman Clerk 2:00
o'clock Aug 17, 1937 P. M. By F. Betz, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS.

Come now Clarence Ochs, Guy A. Kelley and P. L. Newcomb, petitioners in the above entitled cause, by John W. Carrigan, their attorney, and file with their petition for appeal from the order made and entered in said cause upon the 28th day of July, 1937, confirming the order of Hon. Hugh L. Dickson, Referee in Bankruptcy, the assignment of errors upon which they will rely from the prosecution of said appeal to the United States Circuit Court of Appeals for the Ninth Circuit. as follows:

I.

The Court erred in making that certain order denying petition for review and confirming the order of Referee, made and entered on the 28th day of July, 1937, and reading as follows:

“IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA CENTRAL DIVISION.

In the Matter of)	
	)	In Bankruptcy
FRED E. KEELER,)	
	)	No. 23666-C
a Debtor)	

ORDER IN RE PETITION FOR REVIEW FILED
BY CLARENCE OCHS, GUY A. KELLEY AND
P. L. NEWCOMB.

The Petition for Review filed by Clarence Ochs, Guy A. Kelley and P. L. Newcomb to review the order made

by the Honorable Hugh L. Dickson upon the 9th day of April, 1937, came on regularly to be heard before this Court upon Monday, the 28th day of June, 1937, John W. Carrigan appearing in behalf of petitioners and Ben S. Hunter appearing in behalf of O. T. Gilbank and Hugo W. Romberg, the Committeemen of the Estate of Fred E. Keeler, a debtor, and the matter having been argued orally and at the request of the parties submitted on briefs, and briefs having been filed by the respective parties to this proceeding, and the Court having fully considered the oral arguments and the briefs filed and having reviewed the testimony, and it appearing therefrom that the Findings of Fact made by the Honorable Hugh L. Dickson are correct and that his order made pursuant thereto is in accordance with the law,

IT IS ORDERED that said Petition for Review be and the same hereby is denied and the decision rendered herein by the Honorable Hugh L. Dickson be and the same hereby is confirmed.

IT IS FURTHER ORDERED that O. T. Gilbank and Hugo W. Romberg, as the Committeemen of the Estate of Fred E. Keeler, a debtor, recover from said petitioners their costs in this matter expended.

Dated: July 28, 1937.

Geo. Cosgrave
Judge.

Approved as to Form:

John W. Carrigan

Attorney for Petitioners

Ben S. Hunter

Attorney for Respondents."

II.

The Court erred in making said order for the reason that said conclusion of law, is not supported by and is contrary to the facts as established by the evidence.

III.

The Court erred in making and adopting its conclusion that the Findings of Fact made by the Honorable Hugh L. Dickson are correct, and that his order made pursuant thereto is in accordance with the law;

IV.

The Court erred as a matter of law in failing and refusing to find that the parties had themselves determined their rights under said contract and placed their own interpretation thereon.

V.

The Court erred as a matter of law in failing and refusing to find what the parties intended the language to mean of Paragraph 2 of the Contract;

VI.

The Court erred as a matter of law in failing and refusing to find what the parties understood the language to mean of Paragraph 2 of the contract;

VII.

The Court erred as a matter of law in failing and refusing to find that the Committeemen of the Estate of the debtor had acquiesced in the construction placed on the contract by the petitioners and their assignors;

VIII.

The Court erred as a matter of law in failing and refusing to find that when general and specific provisions of a contract deal with the same subject matter, the specific provisions, if inconsistent with the general provisions, are of controlling force;

IX.

The Court erred as a matter of law in failing and refusing to find that the Committeemen of the Estate of the debtor are estopped to maintain a position inconsistent with one in which they had acquiesced for a long period of time, and from which they had accepted benefits;

X.

The Court erred as a matter of law in failing and refusing to find that the paragraph number 4 of said contract entitled the petitioners to receive and retain sixty per cent of the net proceeds of all oil and gas produced, saved and sold from said premises;

XI.

The Court erred as a matter of law in failing and refusing to find that the petitioners are entitled to sixty per cent of all the oil and gas produced, saved and sold from said premises;

XII.

The Court erred as a matter of law in finding and concluding that petitioners are entitled to sixty per cent of seventy-five per cent of all oil and gas produced, saved and sold from said premises.

WHEREFORE, petitioners pray that said order may be reversed and for such other and further relief as to the Court may seem just and proper.

Dated this 17th day of August, 1937.

John W. Carrigan
Counsel for Petitioners.

[Endorsed]: Filed R. S. Zimmerman 41 min past 2:00 o'clock Aug 17 1937 P. M. By M. J. Sommer Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND.

Upon reading and filing the Assignment of Errors alleged by Clarence Ochs, Guy A. Kelley and P. L. Newcomb, the petitioners, and upon reading and filing the petition of said Clarence Ochs, Guy A. Kelley and P. L. Newcomb, for an allowance of an appeal and for an order fixing the amount of the cost bond on appeal, and good cause appearing therefor

IT IS ORDERED that an appeal by Clarence Ochs, Guy A. Kelley and P. L. Newcomb, be and the same is hereby allowed for the purpose of having and to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the order denying petition for review of the report of Hon. Hugh L. Dickson, Referee, and confirming said report heretofore made and entered in the above entitled cause on the 28th day of July, 1937, and that a duly authenticated transcript of the record of all proceedings and all evidence be transmitted forthwith to said Circuit Court of Appeals for such purpose.

IT IS FURTHER ORDERED that said Clarence Ochs, Guy A. Kelley and P. L. Newcomb shall file with the Clerk of this Court, a good and sufficient bond to be approved by this Court in the sum of \$250, conditioned that if said Clarence Ochs, Guy A. Kelley and P. L.

Newcomb shall prosecute their appeal to effect and shall answer all damages for costs in the event they fail to make good their appeal, then the obligation of said bond shall be void, otherwise to remain in full force and effect.

Dated this 17 day of August 1937.

Leon R. Yankwich

Judge.

For Judge Cosgrave who is out of the District.

[Endorsed]: Filed R. S. Zimmerman Clerk 41 min.
past 2:00 o'clock Aug 17 1937 P. M. By M. J. Sommer,
Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION FOR COSTS ON APPEAL.

CLARENCE OCHS, GUY A. KELLEY and P. L. NEWCOMB having filed a petition for appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Order of the United States District Court for the Southern District of California, Central Division, dated July 28, 1937, that the Petition to Review filed, of the order made by Honorable Hugh L. Dickson on the 9th day of April, 1937, be denied;

NOW, THEREFORE, the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, authorized to do a general surety business, as Surety, hereby undertakes in the sum of Two Hundred Fifty and No/100 - - (\$250.00) Dollars, and promises on the part of the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb, that they will prosecute their appeal to effect; and that they will pay all costs and damages which may be awarded against them, or any of them, on the appeal, or on the dismissal thereof; and that the undersigned Surety further consents that in case of default or contumacy on the part of the said Clarence Ochs, Guy A. Kelley and P. L. Newcomb, execution to the amount named in this stipulation may issue against the goods, chattels and lands of the undersigned.

Signed, sealed and dated this 13th day of August, 1937.

FIDELITY AND DEPOSIT COMPANY OF
MARYLAND

[Seal] By W. H. Cantwell

W. H. Cantwell — Attorney in Fact

Attest S. M. Smith

S. M. Smith—Agent

STATE OF CALIFORNIA)
) ss:
 COUNTY OF LOS ANGELES)

On this 13th day of August, 1937, before me Theresa Fitzgibbons, a Notary Public, in and for the County and State aforesaid, duly commissioned and sworn, personally appeared W. H. Cantwell and S. M. Smith known to me to be the persons whose names are subscribed to the foregoing instrument as the Attorney-in-Fact and Agent respectively of the Fidelity and Deposit Company of Maryland, and acknowledged to me that they subscribed the name of Fidelity and Deposit Company of Maryland thereto as Principal and their own names as Attorney-in-Fact and Agent, respectively.

[Seal]

Theresa Fitzgibbons

Notary Public in and for the State of California,
 County of Los Angeles.

My Commission Expires May 3, 1938

Examined and recommended for approval as provided
 in Rule 28

John W. Carrigan
 Attorney

Approved this 17th Day of August, 1937.

Leon R. Yankwich,
 District Judge

[Endorsed]: Filed R. S. Zimmerman Clerk at 42 min
 past 2 o'clock Aug. 17, 1937 P. M. By M. J. Sommer,
 Deputy Clerk

[TITLE OF COURT AND CAUSE.]

PRAECIPE

To R. S. ZIMMERMAN, Clerk of the United States District Court, In and for the Southern District of California, Central Division:

You will please prepare and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit duly authenticated copies of the following documents:

1. All docket entries of proceedings before the Court, including all Courts order on the petition of Clarence Ochs, Guy A. Kelley and P. L. Newcomb, to review the order of the Honorable Hugh L. Dickson, Referee in Bankruptcy;

2. Petition of O. T. Gilbank and Hugo W. Romberg for order to show cause by the Honorable Hugh L. Dickson, Referee in Bankruptcy, in re: Huntington Beach Well;

3. Order to show cause directed to Clarence Ochs, Guy A. Kelley and P. L. Newcomb re: Huntington Beach Well, issued by Hon. Hugh L. Dickson, Referee in Bankruptcy, the 16th day of March, 1937;

4. All exhibits introduced in evidence by Clarence Ochs, Guy A. Kelley and P. L. Newcomb, and filed by the Honorable Hugh L. Dickson, upon hearing to show cause;

5. Order directing Clarence Ochs, Guy A. Kelley and P. L. Newcomb to account re: Huntington Beach Well, signed by Hugh L. Dickson, Referee in Bankruptcy, the 9th day of April, 1937.

6. Petition to review Referee's order;

7. Certificate on Review of Hugh L. Dickson, Referee in Bankruptcy, June 9, 1937.

8. Supplemental certificate on review of Hugh L. Dickson, Referee in Bankruptcy, dated June 11, 1937;

9. Agreement, dated November 6, 1935, between Hugo W. Romberg and O. T. Gilbank, as Committeemen of the Estate of Fred E. Keeler, a Debtor, and Arthur G. Gage;

10. Minute order re: Judge Cosgrave, July 19, 1937;

11. Order of Judge Cosgrave of July 28, 1937;

12. Stipulation to settle and allow bill of exceptions;

13. Bill of Exceptions;

14. Petition for Appeal;

15. Assignment of Errors;

16. Order allowing appeal and fixing amount of bond;

17. Bond on appeal;

18. Citation on appeal;

19. Praecipe for transcript of record;

20. Clerk's certificate.

Dated: This 17th day of August, 1937.

John W. Carrigan

Counsel for Petitioners,

510 West Sixth Street, Los Angeles, California.

[Endorsed]: Service of the Above Praecipe and receipt of a copy thereof is hereby accepted and acknowledged this 17th day of August, 1937. Ben S. Hunter by Ben S. Hunter, Jr., Counsel for Respondents O. T. Gilbank and Hugo O. Romberg as Committeemen of the Estate of Fred E. Keeler, a Debtor.

Filed R. S. Zimmerman, Clerk at 43 min. past 2 o'clock Aug. 17, 1937 P. M. By M. J. Sommer, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 70 pages, numbered from 1 to 70 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellants, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; statement of docket entries; referee's certificate on review; referee's supplemental certificate on review; order of July 19, 1937; order of July 28, 1937 in re petition for review; stipulation; bill of exceptions; petition for appeal; assignment of errors; order allowing appeal; stipulation for costs on appeal, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellants herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of September, in the year of Our Lord One Thousand Nine Hundred and Thirty-seven and of our Independence the One Hundred and Sixty-second.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.